

Exhibit B

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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **FOR THE COUNTY OF SAN FRANCISCO**

19 **JUSTICE JOHN TROTTER (RET.),**
20 **TRUSTEE OF THE PG&E FIRE VICTIM**
21 **TRUST,**

22 Plaintiff,

23 v.

24 **PG&E CORPORATION,**
25 **PACIFIC GAS & ELECTRIC COMPANY,**
26 **ASSOCIATED ELECTRIC & GAS**
27 **INSURANCE SERVICES LIMITED,**
28 **ENERGY INSURANCE MUTUAL**
LIMITED, NORTH AMERICAN
SPECIALITY INSURANCE COMPANY,
GREAT LAKES REINSURANCE (UK) SE,
ENDURANCE RISK SOLUTIONS
ASSURANCE COMPANY,
BERKLEY INSURANCE COMPANY,
AMERICAN INTERNATIONAL
REINSURANCE COMPANY, LTD.,
ALLIANZ GLOBAL RISKS US
INSURANCE COMPANY,
LIBERTY INSURANCE
UNDERWRITERS, INC.,

FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

MAR 17 2021

CLERK OF THE COURT

BY: 
Deputy Clerk

ANGELICA SUNGA

Case No. **CGC-21-590296**

COMPLAINT FOR DECLATORY RELIEF
PURSUANT TO CALIFORNIA CIVIL CODE
SECTION 1060

COMPLAINT FOR DECLATORY RELIEF PURSUANT TO CALIFORNIA
CIVIL CODE SECTION 1060

1 STARR INDEMNITY & LIABILITY
2 COMPANY,
3 U.S. SPECIALTY INSURANCE
4 COMPANY CONTINENTAL CASUALTY
5 COMPANY,
6 BARBICAN MANAGING AGENCY
7 LIMITED,
8 TWIN CITY FIRE INSURANCE
9 COMPANY,
10 ARGONAUT INSURANCE COMPANY,
11 HOUSTON CASUALTY COMPANY, and
12 DOES 1-20, inclusive,

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Defendants.

COMPLAINT FOR DECLATORY RELIEF PURSUANT TO CALIFORNIA
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PLAINTIFF Justice John Trotter (Ret.), the Trustee of the PG&E Fire Victim Trust (“Trust”), a California resident, brings this declaratory relief action seeking judicial declarations (1) that **PLAINTIFF** is an indispensable party to any current or future arbitrations and/or judicial proceedings between **DEFENDANTS** regarding insurance issues, including the amount of insurance available from **INSURER DEFENDANTS** for claims related to the extensive damages arising from the separate 2017 North Bay Fires and 2018 Camp Fire; (2) requiring **DEFENDANTS** to permit **PLAINTIFF** to participate in any arbitration, judicial proceedings and/or mediation that seeks to determine the nature, extent, or amount of available insurance coverage available from the **INSURER DEFENDANTS** (or any other limitations on coverage) for claims asserted against the former officers and directors arising from the separate 2017 North Bay Fires and 2018 Campfires; (3) enjoining **DEFENDANTS** from participating in the arbitration hearing presently set for April 30, 2021 unless **PLAINTIFF** is permitted to participate, and directing all **DEFENDANTS** to this Court to resolve ongoing and future disputes pertaining to insurance coverage, or in the alternative, a declaration permitting **PLAINTIFF** to participate in the arbitration hearing presently set for April 30, 2021; and (4) any further equitable and legal relief as the Court may deem proper.

I. PARTIES

A. Plaintiff

1. **PLAINTIFF JUSTICE JOHN TROTTER (RET.)** is the **TRUSTEE OF THE PG&E FIRE VICTIM TRUST** and is a citizen and resident of California. The PG&E Fire Victim Trust is a Delaware trust established by the United States Bankruptcy Court for the Northern District of California (the “Bankruptcy Court”). **PLAINTIFF** was retained as Trustee of the PG&E Fire Victim Trust and was assigned certain claims and causes of action through PG&E’s Chapter 11 plan of reorganization in bankruptcy.

B. Defendants

2. Defendant **PG&E CORPORATION** is a California corporation with corporate headquarters at 77 Beale Street, San Francisco, California. **PG&E CORPORATION** provides

1 power and energy services throughout the State of California and is the primary provider of power
2 and energy to northern and central California.

3 3. **PACIFIC GAS AND ELECTRIC COMPANY** is a California corporation with
4 corporate headquarters at 77 Beale Street, San Francisco, California. **PACIFIC GAS AND**
5 **ELECTRIC COMPANY** is the operating subsidiary of **PG&E CORPORATION** and is
6 regulated by the California Public Utilities Commission. **PACIFIC GAS AND ELECTRIC**
7 **COMPANY** provides power and energy services throughout the State of California and is the
8 primary provider of power and energy in northern and central California.

9 4. **PLAINTIFF** is informed and believes, and thereupon alleges, that **DEFENDANT**
10 **ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED ("AEGIS")**, a
11 corporation, is headquartered in East Rutherford, New Jersey, in Bergen County.

12 5. **PLAINTIFF** is informed and believes, and thereupon alleges, that **DEFENDANT**
13 **ENERGY INSURANCE MUTUAL LIMITED ("EIM")**, a corporation, is headquartered in
14 Tampa, Florida, in Hillsboro County.

15 6. **PLAINTIFF** is informed and believes, and thereupon alleges, that **DEFENDANT**
16 **NORTH AMERICAN SPECIALTY INSURANCE COMPANY ("SWISS RE")**, a
17 corporation, is headquartered in Kansas City, Missouri, in Jackson County. **SWISS RE** is an
18 operating unit of Swiss Reinsurance Company Ltd.

19 7. **PLAINTIFF** is informed and believes, and thereupon alleges, that **DEFENDANT**
20 **GREAT LAKES REINSURANCE (UK) SE ("GREAT LAKES")**, a corporation, is
21 headquartered in London, United Kingdom. **GREAT LAKES** is an operating unit of Munich
22 Reinsurance Company.

23 8. **PLAINTIFF** is informed and believes, and thereupon alleges, that **DEFENDANT**
24 **ENDURANCE RISK SOLUTIONS ASSURANCE COMPANY ("ENDURANCE")**, a
25 corporation, is headquartered in Purchase, New York, in Westchester County. **ENDURANCE** is
26 an operating unit of Sompo International Holdings Ltd.

1 9. **PLAINTIFF** is informed and believes, and thereupon alleges, that **DEFENDANT**
2 **BERKLEY INSURANCE COMPANY ("BERKLEY")**, a corporation, is headquartered in
3 Greenwich, Connecticut, in Fairfield County. **BERKLEY** is an operating unit of W.R. Berkley
4 Corporation.

5 10. **PLAINTIFF** is informed and believes, and thereupon alleges, that **DEFENDANT**
6 **AMERICAN INTERNATIONAL REINSURANCE COMPANY, LTD. ("AIG BERMUDA")**
7 a corporation, is headquartered in Pembroke, Bermuda. **AIG BERMUDA** is a part of American
8 International Group, Inc.

9 11. **PLAINTIFF** is informed and believes, and thereupon alleges, that **DEFENDANT**
10 **ALLIANZ GLOBAL RISKS US INSURANCE COMPANY ("ALLIANZ")**, a corporation, is
11 headquartered in Chicago, Illinois, in Cook County.

12 12. **PLAINTIFF** is informed and believes, and thereupon alleges, that **DEFENDANT**
13 **LIBERTY INSURANCE UNDERWRITERS, INC. ("LIBERTY")**, a corporation, is
14 headquartered in Boston, Massachusetts, in Suffolk County. **LIBERTY** is registered to do
15 business in California with several offices in Northern California, including San Ramon, Elk
16 Grove, and Brentwood.

17 13. **PLAINTIFF** is informed and believes, and thereupon alleges, that **DEFENDANT**
18 **STARR INDEMNITY & LIABILITY COMPANY ("STARR")**, is headquartered in New
19 York, New York. **STARR** is a part of Starr Insurance Companies. **STARR** is currently registered
20 to do business in California, with a regional office in San Francisco, California.

21 14. **PLAINTIFF** is informed and believes, and thereupon alleges, that **DEFENDANT**
22 **U.S. SPECIALTY INSURANCE COMPANY ("USIC")**, a corporation, is headquartered in
23 Houston Texas, in Harris County. **USIC** is an operating unit of HCC Insurance Holdings.

24 15. **PLAINTIFF** is informed and believes, and thereupon alleges, that **DEFENDANT**
25 **CONTINENTAL CASUALTY COMPANY ("CNA")**, a corporation, is headquartered in
26 Chicago, Illinois, in Cook County. **CNA** has four offices in California, including an office in San
27 Francisco.

28 **COMPLAINT FOR DECLATORY RELIEF PURSUANT TO CALIFORNIA**
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1 16. **PLAINTIFF** is informed and believes, and thereupon alleges, that **DEFENDANT**
2 **BARBICAN MANAGING AGENCY LIMITED ("BARBICAN")**, a corporation, is
3 headquartered in London, United Kingdom.

4 17. **PLAINTIFF** is informed and believes, and thereupon alleges, that **DEFENDANT**
5 **TWIN CITY FIRE INSURANCE COMPANY ("HARTFORD")**, a corporation, is
6 headquartered in Hartford, Connecticut, in Hartford County.

7 18. **PLAINTIFF** is informed and believes, and thereupon alleges, that **DEFENDANT**
8 **ARGONAUT INSURANCE COMPANY ("ARGO")**, a corporation, is headquartered in San
9 Antonio, Texas, in Bexar County. **ARGO** has two office locations in California, including an
10 office in San Francisco.

11 19. Plaintiff is informed and believes, and thereupon alleges, that **DEFENDANT**
12 **HOUSTON CASUALTY COMPANY ("HCC")**, a corporation, is headquartered in Houston,
13 Texas, in Harris County. **HCC** is an operating unit of HCC Insurance.

14 **C. Other Defendants**

15 20. The true names and capacities, whether individual, corporate, associate or
16 otherwise of the defendant **DOES 1–20**, inclusive, are unknown to **PLAINTIFF** who therefore
17 sues said defendants by such fictitious names pursuant to Code of Civil Procedure section 474.
18 **PLAINTIFF** further alleges that each of said fictitious defendants is in some manner responsible
19 for the acts and occurrences herein set forth. **PLAINTIFF** will amend this Complaint to show
20 their true names and capacities when the same are ascertained, as well as the manner in which
21 each fictitious defendant is responsible.

22 **II. JURISDICTION AND VENUE**

23 21. This court has jurisdiction over this action pursuant to California Code of Civil
24 Procedure section 410.10. The Court has personal jurisdiction over defendant **PG&E**
25 **CORPORATION** and **PACIFIC GAS AND ELECTRIC COMPANY** (collectively "**PG&E**")
26 because they are headquartered in California and because **PG&E's** actions injured and will injure
27 **PLAINTIFF** in California.

22. This Court has jurisdiction over each of the insurers named in Paragraphs 4 through 19 above (“**INSURER DEFENDANTS**”) because all of **INSURER DEFENDANTS** conduct business in California including, but not limited to, the conduct alleged in this Complaint, and have sufficient contacts with California to render the exercise of jurisdiction by this Court over them permissible under California Code of Civil Procedure section 410.10 as well as the United States and California Constitutions and traditional notions of fair play and substantial justice.

23. Venue is proper in San Francisco County pursuant to California Code of Civil Procedure section 395 because a substantial part of the events or omissions giving rise to the claims alleged occurred in San Francisco, California, which is located within this jurisdiction. Because a significant amount of the harm, as well as important evidence, is located within this jurisdiction, this is the best venue for this action. Each **DEFENDANT** has sufficient contacts with this jurisdiction that venue in this jurisdiction is appropriate.

III. FACTUAL BASIS FOR THE RELIEF SOUGHT

A. The Trust was assigned certain rights pursuant to PG&E’s Bankruptcy Reorganization Plan

24. On January 29, 2019, **PG&E** filed for Chapter 11 Bankruptcy in the Northern District of California under Case Number 19-BK-3008. On June 20, 2020, the Honorable Dennis Montali approved **PG&E’s** Chapter 11 Reorganization Plan (“Reorganization Plan”) to exit bankruptcy, which included the creation of the Fire Victim Trust (“Trust”). The Trust was established to serve as a vehicle to compensate over 70,000 victims who filed claims against **PG&E** for scores of deaths, personal injury, damage or destruction to property and emotional distress. As part of the Reorganization Plan, **PG&E** agreed to establish the Trust, which is a limited fund comprised of cash, stock, and an assignment of specific claims, to help fairly compensate the victims. The Trust is responsible for administering, processing, settling, resolving, liquidating, satisfying, and paying all outstanding fire victim claims, and prosecuting or settling all assigned rights and causes of action assigned to it through the Fire Victim Trust Agreement and **PG&E’s** Reorganization Plan.

1 25. Amongst the assigned rights and causes of action assigned to the Trust as part of the
2 Reorganization Plan was **PG&E**'s causes of action against its former directors and officers relating
3 to the 2017 North Bay Fires and the 2018 Camp Fire. In exchange for this assignment, **PLAINTIFF**
4 agreed to only assert new litigation claims against **PG&E**'s former officers and directors and not
5 against any current officers or directors. **PLAINTIFF** also agreed that any recovery for these claims
6 would be limited to the proceeds of Directors and Officers Liability Insurance policies discussed
7 below and that **PLAINTIFF** would not pursue the personal assets of former officers and directors.

8 26. Therefore, the right to sue **PG&E**'s former directors and officers for their various
9 managerial decisions or conduct that led to the separate 2017 North Bay Fires and the 2018 Camp
10 Fire, belongs to the **PLAINTIFF**, as Trustee, to pursue on behalf of the Trust.

11 27. Each Directors and Officers Liability Insurance Policy ("D&O Liability Insurance")
12 purchased by **PG&E** provides coverage designated as Side A, Side B or Side C. Side A typically
13 insures the directors and officers against non-indemnified or non-indemnifiable losses. Side B
14 coverage typically covers the insured for the costs incurred in indemnifying its directors and officers
15 for defense costs and liability for actions brought against them, including securities, derivative, and
16 other actions for alleged Wrongful Acts, including claims alleging breach of duty, neglect, error,
17 misstatement, misleading statement or omission as they might be covered under the policies. Side
18 C coverage typically insures **PG&E** for Securities Claims, as defined by the particular policies of
19 insurance.

20 28. Under the Reorganization Plan, the asset specified to satisfy the Trust's assigned
21 claims is the "Side B" coverage available under two D&O Liability Insurance policies that **PG&E**
22 purchased from the **INSURER DEFENDANTS** to cover alleged wrongful acts in 2017 and 2018.
23 Side B coverage refers to the amount, under the operative policies, that the **INSURER**
24 **DEFENDANTS** are obligated to pay to **PG&E** to reimburse it for the defense costs and liability
25 amounts incurred indemnifying its past or present directors and officers in connection with a lawsuit
26 or other claims asserted against **PG&E** directors and officers. It is clear that, under the
27 Reorganization Plan, the proceeds of "Side B" coverage under the 2017 and 2018 D&O Liability

1 Insurance policies are intended to benefit the victims of the 2017 North Bay Fires and 2018 Camp
2 Fire. Accordingly, **PLAINTIFF** has a right to step into **PG&E**'s shoes with regards to pursuing
3 any dispute to receive the proceeds from any Side B coverage from the **INSURER DEFENDANTS**
4 that will satisfy the Trust's claims against the former officers and directors relating to the separate
5 2017 North Bay Fires and the 2018 Camp Fire.

6 29. Due to the assignment of the underlying claims and causes of action, the Trust is a
7 third-party claimant, who under contract principles may sue as a third-party beneficiary. A claimant
8 may sue the insurer directly as a third-party beneficiary utilizing traditional contract principles.
9 Under California law, third-party beneficiaries of contracts have the right to enforce the terms of the
10 contract under Civil Code section 1559 which provides: "A contract made expressly for the benefit
11 of a third person, may be enforced by him at any time before the parties thereto rescind it."
12 Traditional third-party beneficiary principles do not require that the person to be benefited be named
13 in the contract. **PG&E** intended to benefit the Trust with respect to the proceeds of the D&O
14 Liability Insurance policies because a critical piece of the Reorganization Plan (and the settlements
15 that allowed **PG&E** to exit bankruptcy) was the assignment of claims to the Trust that could only
16 be satisfied out of the D&O Liability Insurance policies. Thus, **PLAINTIFF** has a right to be heard
17 with respect to the pending arbitration.

18 30. Accordingly, **PLAINTIFF** has a right to step into **PG&E**'s shoes with regards to
19 pursuing any dispute to receive the proceeds from any Side B coverage from **INSURER**
20 **DEFENDANTS** that will satisfy the Trust's assigned claims against the former officers and
21 directors relating to the relating to the separate 2017 North Bay Fires and the 2018 Camp Fire.
22 Although **PLAINTIFF** is not a named party to any insurance contract or policy between
23 **DEFENDANTS** and **INSURER DEFENDANTS**, **PLAINTIFF** is third-party claimant who may
24 sue the insurer directly as a third-party beneficiary of relevant Side B insurance policies because the
25 Reorganization Plan expressly provides that certain claims assigned to the Trust may only be
26 satisfied from Side B insurance policies.

1 31. Based upon the assignments of these rights and claims under the Reorganization Plan
2 in 2020, **PLAINTIFF** was required to intervene as the new plaintiff in several shareholder
3 derivative actions that had been filed as far back as 2017 and were stayed due to **PG&E's**
4 bankruptcy. A stipulation and order substituting the Fire Victim Trust as the Plaintiff in these cases,
5 under Superior Court Case No. CGC-18-572326, was granted by this Court on November 5, 2020.

6 32. On February 24, 2021, **PLAINTIFF** filed an Amended Complaint under the same
7 Superior Court Case number, against former officers and directors of **PG&E** for breaches of
8 fiduciary duty related to the 2017 North Bay Fires and for separate breaches of fiduciary duty related
9 to the 2018 Camp Fire. This Amended Complaint, filed less than a month ago, is the first complaint
10 filed by **PLAINTIFF** and contains allegations germane to Side B coverage issues. Any judgement
11 issued in these actions will be satisfied by the Side B coverage provided by the 2017 and the 2018
12 D&O Liability Insurance policies issued to **PG&E** by the **INSURER DEFENDANTS**.

13 **B. PG&E and INSURER DEFENDANTS dispute the amount of coverage available**
14 **under the D&O Liability Insurance policies**

15 33. **PLAINTIFF** alleges, upon information and belief, that in 2017, **PG&E** purchased a
16 tower of "claims made" D&O Liability Insurance policies from certain **INSURER**
17 **DEFENDANTS** to protect **PG&E** and its directors and officers against claims arising from
18 catastrophic events. This 2017 tower provides coverage for claims arising between May 20, 2017
19 to May 20, 2018. In 2018, **PG&E** purchased another tower of insurance from **INSURER**
20 **DEFENDANTS**, and the 2018 tower provides coverage for claims arising between May 20, 2018
21 to May 20, 2019.

22 34. The rights and obligations of **PG&E** and the **INSURER DEFENDANTS** under the
23 policies are reflected in written contracts and policies. As referenced above, under the
24 Reorganization Plan, the Side B coverage under these policies is the asset assigned to satisfy
25 **PLAINTIFF's** assigned claims and **PLAINTIFF** is a third-party beneficiary of the Side B policy
26 provisions.

1 35. On information and belief, there is a dispute between **PG&E** and the **INSURER**
2 **DEFENDANTS** concerning the amount of Side B coverage available under the policies to cover
3 the **PLAINTIFF**'s claims and other suits arising from of the 2017 North Bay Fires and the 2018
4 Camp Fire, which were two separate catastrophic events arising from completely separate causes
5 and harming unique victims. On information and belief, the **INSURER DEFENDANTS** will or
6 may take the position that only the 2017 tower of insurance applies and therefore the amount of
7 Side B coverage is limited to \$200,000,000. On information and belief, **PG&E** will or may contest
8 the **INSURER DEFENDANTS**' position and instead will or may take the position that both the
9 2017 and 2018 towers of insurance are applicable and the amount of Side B coverage available is
10 \$400,000,000, if not more.

11 **C. PG&E and the INSURER DEFENDANTS are in arbitration without PLAINTIFF**

12 36. **PLAINTIFF** alleges that after the claims were assigned to **PLAINTIFF** under the
13 Reorganization Plan, **PG&E**, without the advice, consent, or participation of **PLAINTIFF**,
14 commenced arbitration with the **INSURER DEFENDANTS** to resolve a dispute regarding the
15 amount of Side B coverage available for claims arising out of the separate 2017 North Bay Fires
16 and the 2018 Camp Fire. An arbitration hearing, to which **PLAINTIFF** is not a party, is currently
17 scheduled for April 30, 2021.

18 37. The arbitration began at least six months before **PLAINTIFF** filed his Amended
19 Complaint. Instead of waiting for **PLAINTIFF** to file his operative complaint, **DEFENDANTS**
20 rushed to convene a private arbitration in which they could attempt to resolve coverage disputes
21 based on pleadings that are at least four years old, several before the Camp Fire even occurred, and
22 filed by shareholders and not the Trust, and which no longer apply given the Amended Complaint
23 now filed by the Trust. The allegations in the Amended Complaint are the most important factor
24 affecting the resolution of the arbitration dispute.

25 38. Upon learning of the arbitration, counsel for **PLAINTIFF** requested an opportunity
26 to participate in the arbitration on several occasions. The arbitration will determine the value of an
27 asset that is the sole source of recovery for claims that belong to the Trust and the Trust's interests

1 are not currently represented at the arbitration. The **INSURER DEFENDANTS** have an obvious
2 conflict of interest with the Trust, since the carriers will likely seek to minimize their exposure and
3 assert that only the 2017 tower of insurance is applicable. Moreover, **PG&E** is conflicted and
4 cannot adequately represent **PLAINTIFF**'s interests since **PLAINTIFF**'s claims in the underlying
5 litigation are against **PG&E**'s former officers and directors. **PG&E** also has a continuing business
6 relationship with the **INSURED DEFENDANTS**, and therefore its interest in this dispute does not
7 fully align with that of the Trust. Most importantly, none of the parties in the arbitration have the
8 familiarity or expertise with **PLAINTIFF**'s claims that **PLAINTIFF** does, and therefore cannot
9 adequately advocate for a position that both towers of insurance are implicated.

10 39. Specifically, on February 17, 2021, counsel for **PLAINTIFF** requested that **PG&E**
11 consent to **PLAINTIFF**'s intervention of the arbitration based upon **PLAINTIFF**'s contention that
12 the Trust was an indispensable party to the arbitration because Side B coverage is an asset that
13 belongs to the Trust for the satisfaction of the Claims that were assigned to the Trust during the
14 Reorganization Plan. *See* Exhibit A. **PG&E** rejected **PLAINTIFF**'s request to consent to
15 intervene.

16 40. On February 22, 2021, counsel for **PLAINTIFF** requested that **PG&E** provide
17 **PLAINTIFF** with information regarding the terms of the arbitration agreement, the identity of the
18 arbitrators, the address of the venue for the arbitration, and/or contact information for a case
19 manager so that **PLAINTIFF** could take independent action to request to intervene on behalf of the
20 Trust. Again, **PG&E** refused to provide **PLAINTIFF** with this information claiming that it was
21 confidential. However, **PG&E** agreed to inform the Arbitration Panel of **PLAINTIFF**'s request on
22 **PLAINTIFF**'s behalf. **PLAINTIFF** prepared a letter requesting this information understanding
23 that it would be provided to the Arbitration Panel by **PG&E**. *See* Exhibit B.

24 41. On March 8, 2021, counsel for **PLAINTIFF** was informed by counsel for **PG&E**
25 that the Arbitration Panel purportedly denied **PLAINTIFF**'S request to intervene in the arbitration.
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1 42. On March 10, 2021, counsel for **PLAINTIFF** requested that **PG&E** provide all
2 materials submitted in support or opposition of the Trust's request to intervene as well as any
3 written ruling explaining the basis for denial of **PLAINTIFF**'s request to intervene. *See* Exhibit C.

4 43. To date, **PLAINTIFF** has not received any materials submitted in support or
5 opposition to the Trust's request to intervene, nor any written ruling or other documentation
6 articulating the Arbitration Panel's purported basis for denying **PLAINTIFF**'s request to participate
7 in the arbitration.

8 44. On information and belief, the arbitration hearing is scheduled on April 30, 2021
9 without **PLAINTIFF**'s participation. If the arbitration proceeds as presently scheduled without
10 **PLAINTIFF**'s participation, there is a significant potential for prejudice to the asset assigned to
11 the Trust for satisfaction of its claims, which will be to the great detriment of the 70,000 victims of
12 the two fires who must look to the Side B proceeds to satisfy their claims under the Reorganization
13 Plan ordered by the Bankruptcy Court.

14 **D. The controversy between the parties is ripe for declaratory relief**

15 45. **DEFENDANTS** have commenced an arbitration concerning D&O Liability
16 Insurance policies that are the sole source of recovery and satisfaction for certain causes of action
17 that were assigned to the Trust by **DEFENDANTS**.

18 46. Under **PG&E**'s Reorganization Plan, **PLAINTIFF** has an assigned, cognizable
19 right in the value of the asset that is the subject of the arbitration between the **DEFENDANTS**.

20 47. **PLAINTIFF** has exhausted all legal avenues to intervene and participate in the
21 arbitration between the **DEFENDANTS**. The dispute amongst the parties as to whether and how
22 **PLAINTIFF** may intervene and participate in the arbitration is sufficiently certain and concrete to
23 warrant declaratory relief by this Court.

24 48. **PLAINTIFF** has no other alternative remedy to safeguard the value of the asset
25 assigned to satisfy its claims as a condition of **PG&E**'s Reorganization Plan as the source of the
26 fire victims' recovery.

1 49. The **INSURER DEFENDANTS** have obvious conflicts of interests with the Trust,
2 since the carriers seek a ruling that only one tower of insurance is applicable. **PG&E** is also
3 conflicted since **PLAINTIFF**'s claims in the relevant litigation are against **PG&E**'s former
4 officers and directors. There is also a competing interest between **PLAINTIFF** and **PG&E**
5 shareholders who seek financial returns but have not been victims of the 2017 North Bay Fires and
6 the 2018 Camp Fire. Most importantly, none of the parties in the arbitration have **PLAINTIFF**'s
7 familiarity and expertise with **PLAINTIFF**'s claims, and the basis for those claims, to adequately
8 advocate for the fact that both towers of insurance are implicated.

9 50. **PLAINTIFF** will suffer imminent and significant hardship without a judicial decree
10 from this Court. The value of the asset which funds the recovery to the victims of the separate
11 2017 North Bay Fires and 2018 Camp Fire, may be substantially undermined without an
12 opportunity for **PLAINTIFF** to explain the nature of the wrongs giving rise to claims against the
13 D&O Liability Insurance policies, and to take steps to protect all of the assets assigned to satisfy
14 the Trustee's assigned claims by the Bankruptcy Court.

15 **V. CAUSE OF ACTION**

16 **DECLARATORY RELIEF**

17 **(Against ALL DEFENDANTS and DOES 1-20)**

18 52. **PLAINTIFF** hereby re-alleges and incorporates by reference each allegation set
19 forth above, as if fully set forth in detail herein.

20 53. Pursuant to the Reorganization Plan and its assignment to the Trust of the right to
21 prosecute the claims, the Trust is a third-party beneficiary of the Side B coverage under the 2017
22 and 2018 D&O Liability Insurance towers.

23 54. **PLAINTIFF** alleges, upon information and belief, that **PG&E** and **INSURER**
24 **DEFENDANTS** dispute some or all of **PLAINTIFF**'S contentions as set forth above and as
25 enumerated in this Complaint. **PG&E** misunderstands the factual basis for **PLAINTIFF**'s
26 claims against **PG&E**'s former directors and officers and cannot adequately represent
27

1 **PLAINTIFF**'s interests in addressing the amount and extent of Side B coverage under the 2017
2 and 2018 D&O Liability Insurance policies.

3 55. There are also competing interests in those funds between **PLAINTIFF** and
4 **PG&E** shareholders who seek financial returns but have not lost their homes, property, and
5 livelihoods like the victims of the separate 2017 North Bay Fires and 2018 Camp Fire.

6 56. The positions taken by **PG&E** and the **INSURER DEFENDANTS** in the
7 arbitration will directly impact the **PLAINTIFF**'s rights under the policies that, by the
8 Reorganization Plan, are the sole source of recovery for causes of action assigned to the Trust.

9 57. The arguments and issues addressed in arbitration, and the potential rulings that can
10 be issued by the Arbitration Panel, are therefore an essential part of the Reorganization Plan, and
11 to the extent that there is any dispute regarding the full availability of both towers of insurance
12 coverage, **PLAINTIFF** is entitled to a seat at the table to address the full extent of coverage.

13 58. Without judicial intervention by this Court, the foundational premise of the
14 Reorganization Plan, including the right to seek recovery under the Side B coverage under the
15 D&O Liability Insurance towers, a right which fire victims relied upon in agreeing to the
16 Reorganization Plan, will be jeopardized.

17 59. A dispute is present, and an actual controversy exists between **PLAINTIFF** and
18 **DEFENDANTS** as to whether **PLAINTIFF** has a right to participate in the arbitration between
19 **PG&E** and **INSURER DEFENDANTS**.

20 60. **PLAINTIFF** will suffer irreparable harm unless it is recognized as a third-party
21 beneficiary and indispensable party to any current or future proceedings addressing the nature,
22 extent, and availability of Side B insurance coverage and other coverage issues, including but not
23 limited to the arbitration hearing currently set to take place on April 30, 2021 without
24 **PLAINTIFF'S** participation. Being deprived of the rights to address and protect the insurance
25 coverage that is a critically important source of recovery under the Reorganization Plan would
26 constitute irreparable harm to **PLAINTIFF**.

1 61. Unless enjoined, **PG&E** and the **INSUER DEFENDANTS** issuing the D&O
2 Liability Insurance towers could enter into agreements that would limit or foreclose the
3 **PLAINTIFF**'s ability to proceed against the Side B coverage that was designated by the
4 Bankruptcy Court as its source for recovery for the tens of thousands of victims' claims.

5 62. **PLAINTIFF** therefore seeks a judicial declaration that **PLAINTIFF** is an
6 indispensable party to current or future proceedings addressing the of Side B insurance coverage
7 issues, and that **PLAINTIFF** is therefore an indispensable party to any action seeking to construe,
8 interpret, or regulate the insurance coverage that might be available to the various claims that have
9 been asserted for the benefit of the multiple sets of claimants represented by the Trust.

10 63. **PLAINTIFF** also seeks a judicial declaration that enjoins **DEFENDANTS** from
11 participating in the arbitration prior to the April 30, 2021 unless **PLAINTIFF** is permitted to
12 participate, and that directs all **DEFENDANTS** to this Court to resolve ongoing and future issues
13 pertaining to insurance coverage. In the alternative, at a bare minimum, **PLAINTIFF** seeks and
14 hereby requests a judicial declaration that **PLAINTIFF** be permitted to participate in the
15 arbitration hearing presently set for April 30, 2021 or any future arbitration proceedings regarding
16 disputes over insurance coverage under the 2017 and 2018 towers of insurance.

17 64. Wherefore, **PLAINTIFF** prays for relief as hereinafter set forth.

18 **VI. PRAYER FOR RELIEF**

19 WHEREFORE, **PLAINTIFF** prays that this Court enter declarations in his favor as
20 follows:

21 65. A declaration that that **PLAINTIFF** is an indispensable party to any current or
22 future arbitrations and/or judicial proceedings between **PG&E AND INSURER DEFENDANTS**
23 regarding insurance issues, including the amount of insurance available from **INSURER**
24 **DEFENDANTS** for claims related to the extensive damages arising from the 2017 North Bay
25 Fires and 2018 Camp Fire.

26 66. A declaration that **DEFENDANTS** permit **PLAINTIFF** to participate in any
27 arbitration and/or judicial proceedings that seek to determine the nature, extent or amount of

1 available insurance coverage available from the **INSURER DEFENDANTS** (or any other
2 limitations on coverage) for claims asserted against the former officers and directors arising from
3 the separate 2017 North Bay Fires and 2018 Camp Fire.

4 67. A declaration that enjoins **DEFENDANTS** from participating in the arbitration
5 hearing presently set for April 30, 2021 and directs all **DEFENDANTS** to this Court to resolve
6 ongoing and future issues pertaining to insurance coverage, or in the alternative, a declaration
7 permitting **PLAINTIFF** to participate in the arbitration hearing presently scheduled on April 30,
8 2021 or any later date that might be selected.

9 68. For such other and further equitable and legal relief as the Court may deem proper.

10 Dated: March 17, 2021

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Frank M. Pitre (SBN 100077)
Mark C. Molumphy (SBN 168009)
Karin B. Swope *Pro Hac Pending*
Nabilah A. Hossain (SBN 329689)



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28 **COMPLAINT FOR DECLATORY RELIEF PURSUANT TO CALIFORNIA
CIVIL CODE SECTION 1060**

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*Attorneys for Plaintiff Justice John Trotter
(Ret.), Trustee of the PG&E Fire Victim Trust*

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NEW YORK

February 17, 2021

VIA U.S. MAIL AND E-MAIL

James Brandt
LATHAM WATKINS LLP
885 Third Avenue
New York, NY 10022-4834
james.brandt@lw.com

Re: PG&E vs. Associated Electric & Gas Insurance Services Ltd., et al.

Dear Jimmy:

Last week you informed me that PG&E had commenced an arbitration with its insurers over the extent of D&O coverage available for certain claims arising out of the 2017 and 2018 Northern California Wildfires. As we discussed, although I was aware that PG&E's "Tower of Insurance" was contesting whether the extent of available coverage was \$200 million or \$400 million, I was not informed until last week that PG&E **had actually commenced an arbitration proceeding** to address this issue and that a hearing date of April 30th was set.

I informed you on Monday, February 15th that the Fire Victims Trust ("FVT") intended to intervene in that action, because in my opinion the FVT is an indispensable party that has a specific interest in Side B coverage under the D&O policy an asset that belongs to the FVT for satisfaction of the claim PG&E assigned to the Trust as a condition of exiting Bankruptcy.

I explained to you that **this is a significant asset**, and the FVT has no alternative remedy to safeguard the value of this asset without participation in the pending arbitration.


Our informal discussions have unfortunately failed to lead to a resolution of our intent to intervene. Accordingly, I now write formally to request PG&E's consent to our intervention as a participant in the upcoming arbitration proceeding. Additionally, I request copies of the following:

1. All documents, pleadings or other materials submitted to the arbitrators.
2. A service list of all parties and counsel participating in the arbitration.
3. The contact information for the arbitrators and venue of the arbitration.
4. Any reservation of rights letter sent to PG&E regarding the D&O policies at issue in the arbitration.

Given the time constraints, I would appreciate a response, on or before close of business Friday, February 19th.

Please treat this letter and our prior communications the past week as my effort to meet and confer and avoid unnecessary court intervention.

Sincerely,



FRANK M. PITRE

cc: Justice Trotter, Trustee FVT
Pat Kelly
Michael A. Kelly
Steven M. Campora
Dario de Ghetaldi
Amanda L. Riddle
Francis A. Bottini
Mark C. Molumphy
Kevin J. Orsini

LOS ANGELES

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NEW YORK

February 22, 2021

VIA U.S. MAIL AND E-MAIL

James Brandt
LATHAM WATKINS LLP
885 Third Avenue
New York, NY 10022-4834
james.brandt@lw.com

Re: PG&E vs. Associated Electric & Gas Insurance Services Ltd., et al.

Dear Mr. Brandt:

Introduction

I am co-counsel for the Trustee of the Fire Victims Trust ("FVT") which was established to compensate over 70,000 victims who have filed claims against PG&E for scores of deaths, personal injury, damage or destruction to property and emotional distress. As you are no doubt aware, PG&E's bankruptcy revealed the possibility that there were inadequate financial resources to compensate all victims at full value. Accordingly, PG&E agreed to establish a limited fund comprised of cash, stock and an assignment of specific claims, in order to help fairly compensate victims.

Side B Coverage

Among the assets included to fund the Fire Victims Trust was the assignment of PG&E's claims against its former officers and directors who abdicated their fiduciary duties to PG&E by failing to adopt robust policies and procedures for vegetation management or provide oversight of PG&E's aging transmission tower infrastructure. The asset specifically identified for

satisfaction of these claims was Side B of the applicable D&O insurance coverage. Accordingly, the extent of insurance coverage available under the towers of insurance currently serves as a limit to the value of the assigned claims. Ironically, this limit does not apply to claims of shareholders against Directors and Officers.

The Arbitration

Last week, for the first time, the undersigned became aware that an arbitration had been commenced that may determine the amount of available coverage for PG&E's claims assigned to the FVT, and that a hearing date had already been set. On Monday, February 15th, I contacted you to obtain information about the arbitration proceeding in order that the FVT could intervene, as it was my opinion that the FVT was an indispensable party to the proceeding and had no alternative remedy to safeguard the value of the asset assigned to it as a condition to PG&E exiting bankruptcy.

In this regard, I requested that PG&E, as part of its duty of cooperation in connection with the assignment of its claims, provide the FVT with the following:

1. The contact information for the arbitrators or arbitration case manager and venue of the arbitration;
2. A service list of all parties and counsel participating in the arbitration;
3. All documents, pleadings or other material submitted to the arbitrators in connection with the hearing;
4. Permission to intervene without the necessity of seeking assistance through the Court.

Request

You have advised me that you are constrained by the terms of the arbitration agreement and/or applicable insurance contracts, and cannot provide me with this information because it is "Confidential." Since it is your position that you cannot provide the identity of the arbitrators, the address of the venue for the arbitration, or a case manager who can be reached to inform them of the request by the Trustee of the FVT to intervene, **I am writing this letter to you in a desperate effort to obtain your cooperation in alerting the arbitrators and other parties of this request.**

Summary

Time is of the essence. The value of these claims as constrained by the extent of coverage available under the towers of insurance for 2017 and 2018 is significant to the interests of fire victims. Denial of the right to intervene would be yet another blow to the FVT's ability to fairly compensate victims.

The Trustee of the FVT has now taken over in all pending shareholder derivative lawsuits previously filed in State and Federal Court. An Amended Complaint will be filed on behalf of the Trustee of the FVT next week. Based on my review, the shareholder derivative complaints show a complete misunderstanding of the factual basis for PG&E's claims against its former Officers and Directors. I do not say this cavalierly. I say this because the lawyers retained by the Trustee have over a decade of history with the distinct failures of PG&E's Officers and Directors, and served as lead counsel in the underling litigation concerning the 2017 North Bay Fires as well as lead counsel in litigation concerning the 2018 Camp Fire.

Please confirm that this request will be conveyed to the appropriate representatives and parties involved in the arbitration. If I do not receive confirmation and a response to this request

by 5pm pt on Tuesday, February 23rd, you leave us no alternative but to seek appropriate relief through the Court.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Frank M. Pitre', with a long horizontal flourish extending to the right.

FRANK M. PITRE

cc: Justice Trotter, Trustee FVT
Pat Kelly
Michael A. Kelly
Steven M. Campora
Dario de Ghetaldi
Amanda L. Riddle
Francis A. Bottini
Mark C. Molumphy
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NEW YORK

March 10, 2021

VIA U.S. MAIL AND E-MAIL

James Brandt
LATHAM WATKINS LLP
885 Third Avenue
New York, NY 10022-4834
james.brandt@lw.com

Re: Justice John Trotter (Ret.) Trustee of the Fire Victims Trust vs. Chew, et al.

Dear Mr. Brandt:

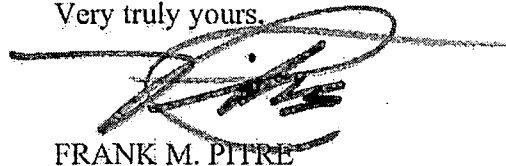
On Monday, March 8th, the Fire Victims Trust (hereafter "FVT or Trust") learned that the Arbitration Panel denied its request to intervene in the current arbitration dispute between PG&E and its insurers. The dispute affects the amount of Side B insurance coverage available for the claims that PGE specifically assigned to the Trust against its former Directors and Officers to help pay the claims of fire victims.

Since the Trust was precluded from receiving any materials submitted in opposition to their request and denied the right to participate or attend the hearing conducted by the Arbitration Panel, the Trust is left in the dark over the basis of the denial. It is our understanding that the Arbitration Panel had issued a written ruling. However, as of the date of this letter, no such ruling has been provided to the Trust to validate that its request was given due consideration. Moreover, the Trust was denied any guidance as to the rules, law or procedures that the Arbitration Panel would use to make its decision – because "the proceedings and process was confidential". As a "concession," the Trust was informed that the Arbitration Panel would

consider its request only if a letter was submitted to you, and that you would in turn provide it to the Panel and the Insurers. Clearly, this is not due process.

I write now to demand that all material submitted in support or opposition to the Trust's request to intervene, together with any ruling explaining the basis for denial of the Trust's request, be provided to the undersigned on behalf of the FVT, by no later than 12:00 noon Pacific time on Friday, March 12.

Very truly yours.

A handwritten signature in black ink, appearing to read 'Frank M. Pitre', is written over a horizontal line.

FRANK M. PITRE

cc: Michael Kelly
Steve Campora
Frank Bottini
Dario De Ghetaldi
Amanda Riddle
Mark C. Molumphy
Pat Kelly
David Molton
Kevin Orsini

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Frank M. Pitre (100077)/Mark C. Molumi (68009)

Cotchett, Pitre & McCarthy, LLP

840 Malcolm Road, Ste. 200, Burlingame, CA 94010

TELEPHONE NO.: 650-697-6000

FAX NO. (Optional): 650-697-0577

ATTORNEY FOR (Name): Plaintiff, Hon. John K. Trotter (Ret.), Trustee of the PG&E FVT

FOR COURT USE ONLY

FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

MAR 17 2021

CLERK OF THE COURT

BY: 
ANGELICA SUNGA Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

STREET ADDRESS: 400 McALLISTER STREET

MAILING ADDRESS: SAN FRANCISCO, CA 94102

CITY AND ZIP CODE:

BRANCH NAME: CIVIL DIVISION

CASE NAME:

Justice Trotter (Ret.), Trustee of the PG&E Fire Victim Trust v. PG&E Corporation, et al.

CIVIL CASE COVER SHEET

☒ **Unlimited**
(Amount
demanded
exceeds \$25,000)

☐ **Limited**
(Amount
demanded is
\$25,000)

Complex Case Designation

☐ Counter ☐ Joinder
Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

CASE NUMBER:

CGC-21-590296

JUDGE:

DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)
☐ Uninsured motorist (46)

**Other PI/PD/WD (Personal Injury/Property
Damage/Wrongful Death) Tort**

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)

☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)
☐ Other employment (15)

Contract

☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse
condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☒ Insurance coverage claims arising from the
above listed provisionally complex case
types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☒ Large number of separately represented parties d. ☐ Large number of witnesses
b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. ☒ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 1; Declaratory Relief

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 17, 2021

FRANK M. PITRE

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Case: 19-30088 Doc# 10460-3 Filed: 03/25/21 Entered: 03/25/21 10:31:25 Page 1 of 2